

OPERATING INDUSTRIES, INC. LANDFILL

Superfund Site

***De Minimis* Settlement Information**

Welcome to the United States Environmental Protection Agency ("U.S. EPA") Region 9's informational web page on the *de minimis* settlements related to the Operating Industries, Inc. Superfund site ("OII Site"). The purpose of this web page is to provide information to members of the public, private companies, and other government agencies regarding *de minimis* settlements related to the OII Site.

Background on OII and the Superfund Law

The OII Site, a former landfill, is located approximately 10 miles east of downtown Los Angeles. The Monterey Park Disposal Co. began landfilling operations at the site in 1948, and in the 1950s Operating Industries, Inc. purchased the landfill and continued its operations. Many wastes have been disposed of at the landfill over the course of its operations, including residential and commercial refuse, liquid wastes, and various hazardous wastes. In January 1984, after myriad environmental problems at the site, including massive leachate generation, gas emissions, surface water runoff, slope instability, and groundwater contamination, the State of California placed the site on the California Hazardous Waste Priority List. The landfill stopped accepting wastes and was closed in late 1984. In that same year, the U.S. EPA proposed listing the site on the National Priorities List under the federal Superfund law, and began conducting studies and taking actions to protect the local environment and the approximately 23,000 people who live within three miles of the site, including 2,100 people who live within 1,000 feet of the landfill.

Among other things, the Superfund law addresses releases or threatened releases of hazardous substances to the environment. The Superfund law defines the term "hazardous substance" to include a wide variety of materials, some of which are very common. For example, bleach and many other cleaning agents are hazardous substances. Certain solvents, lubricating agents, metals, pesticides, and other chemicals can also be hazardous substances, as can highly acidic or low pH materials and materials that are very corrosive or explosive. Pure petroleum products are generally excluded from the definition of hazardous substances, but petroleum substances (such as waste oils) contaminated with hazardous substances are considered hazardous substances. Many different hazardous substances were disposed of at the OII Site.

Under the Superfund law, parties that arranged for the treatment, disposal, or transportation of hazardous substances to a Superfund site (referred to as "generators") are obligated to finance or undertake certain actions that the U.S. EPA determines are necessary to protect public health, public welfare, or the environment. Generators are also responsible for government costs incurred in response to any release or threatened release of a hazardous substance at a Superfund site. These costs are collectively referred to as "response costs." Government response costs can include expenditures for investigation, planning, site cleanup, and enforcement. Under Superfund, generators are liable for response costs at the site where their wastes were disposed, even if their transporter selected the disposal site.

Background on the Potentially Responsible Parties at OII

The threats to human health and the environment posed by the OII Site are the result of the disposal of a large quantity and variety of hazardous substances by thousands of individual waste generators. In fact, the U.S. EPA has records documenting the disposal of manifested waste at

the OII Site by nearly 4,000 generators who disposed of quantities of waste ranging from very small volumes to over 15 million gallons. It is impossible to distinguish between the harms caused by individual waste generators at the OII Site; as a result, in legal terms, this harm is considered an “indivisible injury.” When multiple parties cause an indivisible injury, each individual party can be held liable for all of the costs necessary to repair the injury (in legal terms, each party is “jointly and severally liable” for the injury). Under the Superfund law, each party that sent hazardous substances to the OII Site is jointly and severally liable for all remedial actions at the OII Site, as well as all other response costs incurred or to be incurred by the United States and the State of California.

The Superfund law entitles the United States and the State of California to sue potentially responsible parties (“PRPs”) to recover the costs they have expended on the site. In addition to these government enforcement authorities, the Superfund law allows PRPs who have contributed work or funds to help clean up a Superfund site to bring private lawsuits against other PRPs for contribution, called “Contribution Suits.”

About *De Minimis* Settlements Generally

The Superfund law provides for special treatment of a class of PRPs who disposed of a comparatively small amount of waste at a Superfund site, whose waste was not more toxic or hazardous than other site wastes, and who choose to settle their liability with the U.S. EPA. This class of potentially responsible parties is referred to as “***de minimis* waste generators.**” Under Superfund, *de minimis* parties are allowed to resolve their liability with greater finality than larger waste contributors. Compared to settlements with larger waste generators, *de minimis* settlements can provide broader protection from Contribution Suits (called “Contribution Protection”), as well as more comprehensive promises from the United States and the state not to issue orders or sue *de minimis* PRPs (called “Covenants not to Sue”) regarding specific portions of the response action at the Superfund site, or regarding the Superfund site generally. Eligible *de minimis* PRPs can take advantage of these benefits by agreeing to enter into a *de minimis* settlement and pay their fair share toward the costs of cleaning up a Superfund site.

***De Minimis* Settlements To Date.** To date, over 14,000 individuals, small businesses, and others have entered into *de minimis* settlements with the U.S. EPA to resolve their Superfund liability at hundreds of Superfund sites across the country. Over 400 *de minimis* parties have already joined several settlements related to the OII Site, raising about \$30 million for the cleanup of the OII Site.

***De Minimis* Settlement Payments.** The amount a *de minimis* settlor may pay to join in a *de minimis* settlement varies from site to site. In general, the payment amount is the sum of a basic payment and premium payment. The basic payment is calculated using the estimated cost to clean up the site and the amount of the *de minimis* party's waste (as a percentage of the total amount of waste attributed to all potentially responsible parties at the site). The premium payment varies according to a variety of factors specific to both the site and the settlement.

About the *De Minimis* Process at OII

Classifications of Major and *De Minimis* Generators at OII. Until the last major settlement related to the OII Site in 2002, the U.S. EPA had considered the roughly three hundred PRPs who disposed of the largest amounts of commercial and industrial wastes at the OII Site to

be "Major" PRPs. Each of the Majors contributed at least 110,000 gallons of commercial and industrial wastes to the OII Site, or the equivalent of approximately 0.037% of the OII Site's waste for which the U.S. EPA has disposal records. Collectively, these companies were responsible for over 85% of the manifested wastes at the OII Site. The U.S. EPA had designated the remaining waste contributors, each of whom disposed of less than 110,000 gallons of liquid industrial waste at the OII Site, as *de minimis* waste generators.

Low Volume and High Volume *De Minimis* Generators. During the last round of settlement negotiations with the Majors which culminated in 2002 in the Eighth Partial Consent Decree ("CD-8"), the U.S. EPA agreed to increase the *de minimis* volumetric threshold for the OII Site to allow more parties the option of taking advantage of the special settlement opportunities available to *de minimis* parties. In the CD-8 negotiations, the U.S. EPA increased the *de minimis* threshold to 5 million gallons, or approximately 1.7% of the waste evidenced in the OII Site's disposal records. In so doing, the U.S. EPA allowed many PRPs formerly considered Majors to avail themselves of *de minimis* settlement opportunities. The PRPs who contributed the very largest volumes of waste to the OII Site (over 5 million gallons) were not extended the same opportunities. Therefore, *de minimis* parties may now be categorized into two groups: "low-volume *de minimis* waste generators" who have always been *de minimis* parties at OII and who contributed volumes of waste to the OII Site of 110,000 gallons or less, and "high-volume *de minimis* parties" who, prior to the CD-8 negotiation process, had been considered Majors because they contributed volumes of waste to the OII Site of between 110,000 gallons and 5 million gallons.

About the OII *De Minimis* Settlements

The OII Site *De Minimis* Settlements. The U.S. EPA is conducting a series of *de minimis* settlements, the first several of which have already been finalized. In 2003, the U.S. EPA issued notice letters to about 800 more *de minimis* parties. The U.S. EPA will offer these parties the opportunity either to join an expedited settlement, or to submit requests for financial reviews or waste volume reviews.

***De Minimis* Settlement Terms.** Each round of the OII Site *de minimis* settlements has or will be recorded in a settlement document, which may take the form of either a Partial Consent Decree or an Administrative Order on Consent. *De minimis* parties joining a settlement can choose between two settlement tiers by agreeing to pay either more money for settlement terms offering more comprehensive protections ("Tier I"), or less money for settlement terms allowing for an increased risk of future liability ("Tier II"). Alternatively, if OII Site *de minimis* parties face severe financial hardship or believe there is an error in their volume assessment, they may submit applications for the U.S. EPA's review at the same time as their signature pages and participate in a later settlement. The *de minimis* offer letters will contain a proposed settlement document, as well as applications for financial review and for volume review, settlement instructions, and other information.

Financial Reviews. The U.S. EPA will allow any *de minimis* party facing significant financial difficulties to submit an application for a reduced settlement price. The U.S. EPA will carefully consider all of the applications for financial review and ensure that the amount each applicant is required to pay will be within its means. The application must be accompanied by all of the required financial documents, including copies of tax forms. Once the U.S. EPA notifies an applicant of the results of the review, the applicant will have two weeks to accept the offer or withdraw its signature page.

Waste Volume Reviews. The U.S. EPA assessed a waste volume for each *de minimis* party based on records found at the OII Site, waste transporters' offices, and state regulatory offices. Some *de minimis* parties may find that they have evidence indicating that they sent less waste than the U.S. EPA assessed. Parties may request a review of this evidence by submitting a volume review application accompanying the settlement offer. Once the U.S. EPA notifies an applicant of the results of the review, the applicant will have two weeks to accept the offer or withdraw its signature page.

How to Contact Us About the OII Site De Minimis Settlements

If you have any additional questions or concerns about the OII Site De Minimis Settlements, please contact us by e-mail (and please note the purpose of the message in the "subject" field). The e-mail address is:

OII_de_minimis@epa.gov

You may also use following special telephone number we have set up for de minimis parties:

(800) 394-0495

Due to the large number of de minimis parties and other persons interested in these settlements, we may not be able to respond to your telephone or e-mail inquiries immediately, but we will make every effort to respond as quickly as we can.